



MASTER SERVICE AGREEMENT [OR PROFESSIONAL] SERVICE AGREEMENT

This MASTER [OR PROFESSIONAL] SERVICE AGREEMENT, dated as of this ___ day of _____, 2022 (the “**Effective Date**”) by and between IT-Soft USA Inc. d/b/a Industries eXcellence, having an address as _____ (hereinafter referred to as “**Industries eXcellence**” or “**Supplier**”) and _____, having an address as _____ (the “**Client**”). Supplier and Client may be referred to individually as a “Party” and collectively as the “Parties”.

1 SCOPE OF SERVICES

1.1 The Services. Supplier offers a variety of professional services, such as functional and business process consulting, system design, software development, project management and integration services. Supplier will provide to Client the services described in a statement of work, order, proposal or quote (collectively an “**Order**”) executed by the Parties (the “**Services**”). The Order shall incorporate any blueprint and shall constitute the complete and exclusive definition and description of the Services.

1.2 The Order. The Order will set forth the amount, type and fees for any hardware, software and services purchased from Supplier by Client. In addition, the Order will include the following elements: (a) task description; (b) deliverables and schedule; (c) completion and acceptance criteria for the deliverables; (d) pricing; (e) Client defined requirements; and (f) any special or other terms. Services shall be performed in accordance with Supplier’s hourly or daily rates and policies specified in the Order, provided, however, that Supplier reserves the right to modify such hourly and daily rate pricing on an annual basis with thirty (30) days’ prior written notice to Client. Any Services requested by Client and not included in the Order may be provided by mutual agreement and at Supplier’s then-current rates.

1.3 Changes. Either party may propose a change to an Order by delivering such request to the other party in writing. Each party will evaluate a proposed change to the Order in good faith and will respond in writing within a reasonable time. Supplier will determine the impact of any requested or recommended change to the price or schedule for the Services and advise Client in writing of such impact. Any change to the Order will only become effective upon the execution by both Parties of an amendment to the Order. Unless otherwise agreed upon by the parties, until such time as such amendment is



effective, Supplier will continue to perform, and Client shall continue to pay for, the Services in accordance with the Order.

2 LOCATIONS AND ACCESS

2.1 Locations. The Client will identify to Supplier the sites and/or locations where the Services are to be performed, which sites and/or locations are subject to Supplier's acceptance.

2.2 Access. The Client understands and agrees that it must provide Supplier with timely access to its premises, software and systems, structures, and equipment in order for Supplier to provide and execute the Services hereunder.

3 NOTICES AND COMMUNICATIONS

Any notice or other communication required or to be given in connection with this Agreement and/or the Services to be provided hereunder shall be sent by either (a) certified mail, return receipt requested, (b) overnight mail with a recognized overnight carrier (i.e., Fedex, UPS, DHL or USPS), or (c) facsimile and/or email with an additional copy sent by regular first-class mail. All notices or other communications shall be addressed as set forth in this Agreement or to such other address that is set forth by notice pursuant this Agreement.

4 RESPONSIBILITIES; PERFORMANCE OF SERVICES; ACCEPTANCE



4.1 Client Responsibilities. Client represents that (a) the information (including Confidential Information) supplied by Client and used by Supplier in preparation of an Order is accurate, current and complete; and (b) it has, and will continue to have, during the period of performance of the Services, such legal right and authority to provide Supplier with access and use of all software and systems as Client may be required to provide to Supplier pursuant to an Order. Client acknowledges that Supplier is not liable for any hardware, software, or any other items or services provided to Client by any persons other than Supplier, except as set forth in this Agreement and any applicable Order. Client shall promptly notify Supplier of any anticipated delays or deficiencies in Client's responsibilities and shall provide prompt assistance in resolving any such delays or deficiencies to Supplier's reasonable satisfaction. In the event Supplier determines the information, equipment, software, assistance or payments to be provided by Client are delayed, inaccurate or incomplete, Supplier reserves the right to stop work until Client remedies such delay, inaccuracy or incompleteness to Supplier's reasonable satisfaction.

4.2 Supplier Responsibilities. Except as otherwise expressly agreed to by the Parties, Supplier will be responsible for providing all facilities, personnel and other resources as are necessary to provide the Services hereunder.

4.3 Diligent Manner. In performing the Services, Supplier will follow quality assurance procedures to ensure that, as applicable, the Services have been performed with a high degree of professional quality and reliability.

4.4 Cooperation with Third Parties. If Client performs itself, or retains a third party to perform, any services that interface or interact with Supplier's Services, Supplier will cooperate and coordinate with Client or such third party as reasonably requested or required by such third parties to perform their duties.

4.5 Deliverable Review. Client shall notify Supplier within the later of the timeframe set forth in the Order or ten (10) business days of delivery of a deliverable whether it conforms to the requirements set forth in the Order. Client shall specify in sufficient detail the nature and scope of any non-conforming deliverable. Upon receipt of such notice, Supplier shall act diligently to correct such deficiencies. Client shall not unreasonably withhold approval of deliverables and corrected deficiencies. In the event that Client does not notify Supplier to the contrary within the later of the timeframe set forth in the Order or ten (10) business days from delivery, the deliverables shall be deemed accepted and approved by Client.

4.6 Acceptance of Services. In the event the Services to be rendered by Supplier are in the nature of software installation, configuration and/or integration services



(hereinafter collectively referred to as, "**Integration Services**"), upon Supplier's delivery/completion of the Integration Services, Client must promptly and within ten (10) days of completion conduct a site acceptance test of the Integration Services from that specific order, and upon passing said test the Integration Services will be considered accepted. Unless otherwise stated in the applicable Order, if Client does not conduct a site acceptance test, or if Client does conduct said test, but does not provide the results to Supplier within the ten (10) day period mentioned above, the Integration Services shall be deemed to have passed the test and accepted by the Client, notwithstanding anything to the contrary. Should the Integration Services objectively fail the site acceptance test referenced above (each such failure, a "**Nonconformity**"), the sole remedy of Client for such Nonconformity shall be that the defective or nonconforming Integration Services shall within thirty (30) days after written notice from Client to Supplier, be modified, repaired or replaced by Supplier as mutually agreed to by the parties. Client agrees to reasonably assist Supplier with any and all information needed to successfully test and pass the site acceptance test or any re-test at Supplier's sole expense.

5 MANAGEMENT OF ACTIVITIES

5.1 Project Manager. Each Party shall appoint a project manager, or similar, to lead the project (each a "**Project Manager**") in connection with the execution of the Services hereunder and shall provide the name of such Project Manager to the other Party.

5.2 Mutual Cooperation. The Parties hereto agree to mutually cooperate in connection with the Services to be provided hereunder, and in connection therewith, the Project Managers shall endeavor to achieve the proper performance of the Services by holding meetings, with a frequency and at times to be agreed upon by the Parties.

6 MARKETING DOCUMENTATION

Client hereby expressly grants to Industries eXcellence, its affiliates, successors, and assigns, all rights to reference Client and/or its logos, including quotes, photos taken or illustrations from Client, for advertising and marketing purposes, including but not limited to case studies, print advertisements, reference in Industries eXcellence's marketing materials, press releases, Internet postings and other publications electronic or printed which are produced in the ordinary course of business.

7 TERMS OF INVOICING AND PAYMENT



7.1 Fees and Expenses. The fees/rates for the Services to be provided will be set forth on an Order. In addition, Client shall be responsible for the reimbursement of expenses for travel (transportation, board and lodging) on the basis of photocopies of bills or receipts of hotels, restaurants and public means of transportation.

7.2 Invoicing. Except as expressly provided herein, all Orders are non-cancellable and non-refundable. Client shall pay Industries eXcellence for an Order thirty (30) days from invoice date. In the event any invoice or statement is outstanding after a period of thirty (30) days, a charge of one and five tenths percent (1.5%) per month or the maximum amount provided by law, whichever is greater, will be added to all past due balances, commencing thirty (30) days after the date of each invoice. Any objection by Client to an invoice or statement, or any part thereof, shall be made within (30) days of receipt of said invoice or statement, otherwise said invoice or statement shall be presumed to be correct and binding upon Client. Any such timely dispute by Client will not affect Supplier's right to payment of undisputed amounts and expenses or the Parties' obligations to perform hereunder. It is hereby agreed that Client may not offset or take any discount with respect to any invoice or statement rendered by Industries eXcellence, without the express written consent of Industries eXcellence. If Client fails to make payments when due and such failure continues after Industries eXcellence notifies Client of such failure, Industries eXcellence may refuse to perform any further Services.

7.3 Extension of Credit. Industries eXcellence reserves the right to revoke any credit extended to Client at any time for good and sufficient cause.

7.4 Payment of Taxes. Client is responsible for all charges, costs, and taxes attributed to it provided that Client is not responsible for any taxes imposed on, or regarding, the Supplier's income, revenues, gross receipts, personnel, or real or personal property or other assets.

8 LIMITATION OF LIABILITY AND DISCLAIMER OF IMPLIED WARRANTIES

8.1 LIMITATION OF LIABILITY.

8.1.1 IN NO EVENT WILL SUPPLIER BE LIABLE TO CLIENT FOR ANY LOST PROFITS OR LOST REVENUE, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH DAMAGES ARE FORESEEABLE, AND WHETHER OR NOT SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.1.2 FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE



MAXIMUM FINANCIAL RESPONSIBILITY FOR ANY CLAIM FOR LOSS OR DAMAGES CAUSED TO CLIENT SHALL BE LIMITED TO TWENTY PERCENT (20%) OF THE REMUNERATION PAID BY CLIENT TO SUPPLIER UNDER THE STATEMENT OF WORK FROM WHICH THE CLAIM ARISES.

8.2 **DISCLAIMER OF IMPLIED WARRANTIES.** EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THERE ARE NO OTHER WARRANTIES BY SUPPLIER, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9 NON-SOLICITATION OF PERSONNEL

9.1 Non-Solicitation. The Client agrees not to directly or indirectly solicit or hire the personnel (consultants, employees, etc.) employed by Industries eXcellence without the prior written consent of Industries eXcellence during the term of this Agreement and for two years following its termination.

9.2 Injunctive Relief. In the event of a breach or threatened or attempted breach of the provisions of this Article 9, Supplier may have no adequate remedy in money or damages and, accordingly, may immediately seek an injunction against such breach by Client without having to post bond.

10 CONFIDENTIALITY

10.1 Confidential Information. "Confidential Information" means any information obtained by Client (the "**Receiving Party**") from or on behalf of Supplier (the "**Disclosing Party**") that relates to the past, present or future business activities of the Disclosing Party or its subsidiaries or affiliates, or their respective employees, Clients or third party suppliers or contractors, including the terms and conditions of this Agreement, and any information relating to the applicable entity's (or person's) plans, pricing, methods, methodologies, processes, financial data, lists, intellectual property rights, Client information, apparatus, statistics, programs, research, development, and/or information technology.

10.2 Exclusions. Confidential Information does not include any particular information that the Receiving Party can demonstrate is (a) currently in the public domain; (b) previously known to the Receiving Party free from any obligation to keep it confidential; (c) publicly disclosed by or on behalf of the Disclosing Party either prior to or subsequent to the receipt of such information by the Receiving Party; (d) independently developed by the Receiving Party without any access to or use of Confidential Information of the Disclosing Party; or (e) rightfully obtained by the Receiving Party from a third party



lawfully in possession of the Confidential Information and who is not bound by confidentiality obligations to the Disclosing Party.

10.3 Non-Disclosure. The Receiving Party will hold all Confidential Information of the Disclosing Party in trust and confidence for the Disclosing Party and, except as set forth in this Agreement or as otherwise may be authorized by the Disclosing Party in writing, the Receiving Party will not disclose to any person, firm or enterprise, or use for its own benefit, any Confidential Information of the Disclosing Party. The Receiving Party will treat all Confidential Information of the Disclosing Party with the same degree of care that the Receiving Party treats its own confidential or proprietary information, but in no event less than using standards of reasonable care. The Receiving Party may disclose Confidential Information of the Disclosing Party to the Receiving Party's employees, and to any of the Receiving Party's contractors who are bound to the Receiving Party by confidentiality obligations substantially equivalent to those set forth in this Article 10, solely as required in order for the Receiving Party to perform its obligations under this Agreement, or in the case of Client, to receive the Services. In addition, in the case of the Client, the Client may also disclose Supplier's Confidential Information to employees of its parent, subsidiaries and affiliates. The Receiving Party may disclose Confidential Information of the Disclosing Party if required to do so under applicable law, rule or order provided that the Receiving Party, where reasonably practicable and to the extent legally permissible, provides the Disclosing Party with prior written notice of the required disclosure so that the Disclosing Party may seek a protective order or other appropriate remedy, and provided further that the Receiving Party discloses no more Confidential Information of the Disclosing Party than is reasonably necessary in order to respond to the required disclosure.

10.4 Return of Confidential Information. At any time at the request and option of the Disclosing Party and in the event of termination or expiration of this Agreement, the Receiving Party agrees to promptly: (a) return to the Disclosing Party the Confidential Information; or (b) destroy or permanently erase (on all forms of recordation) the Confidential Information, and, if requested by the Disclosing Party, acknowledge in writing that all such Confidential Information has been destroyed or permanently erased. Notwithstanding the foregoing, each Party may retain copies of the Confidential Information, to the extent required to comply with applicable legal and regulatory requirements, provided, however, that such Confidential Information, will remain subject to the terms and conditions herein.

10.5 Title. The Parties acknowledge and agree that any disclosure of Confidential Information, will in no way be construed to be an assignment, transfer, or conveyance of title to or ownership rights in such Confidential Information.



10.6 Injunctive Relief. In the event of a breach or threatened or attempted breach of the provisions of this Article 10, the Disclosing Party may have no adequate remedy in money or damages and, accordingly, may immediately seek an injunction against such breach without having to post bond.

11 TERM AND TERMINATION

11.1 Term. This Agreement will commence as of the Effective Date and will continue in full force and effect thereafter through the completion date of the Services as set forth on any applicable Order, unless and until earlier terminated as provided herein.

11.2 Termination. Either Party may terminate this Agreement for "Cause" (as hereinafter defined) by giving the other party sixty (60) days prior written notice of termination. "Cause" shall mean the following: (a) if a Party becomes insolvent or unable to pay its debts as they come due or enters into or files (or has filed or commenced against it) a petition, arrangement, application, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or any similar laws of the United States or any state of the United States or any other country, or transfers all or substantially all of its assets to another person or entity; (b) any material breach of this Agreement and/or any Order by a Party; provided, however, that such termination will not be effective if said Party has cured the breach of which it has been notified prior to the expiration of such thirty (30) day notice period.

11.3 Payment to Supplier Upon Termination. In the event this Agreement is terminated prior to the completion of the Services, the Client shall pay to Supplier (a) the unamortized cost of the start-up costs for the Services, as set forth on any applicable Order, to be quantified up to the date of termination, plus (b) any amounts that are due to Supplier for fees and/or expenses rendered in connection with the Services performed up to the date of termination.

12 PROPRIETARY RIGHTS

Unless otherwise specified in the applicable Order, Services provided by Supplier under the relevant Order are not performed on a "work for hire" basis and therefore the intellectual property rights related to any Services, including but not limited to all the ideas, concepts, plans, techniques, designs, models, inventions, processes, methodologies, discoveries, formulae, software (other than third party software) of every kind (including all software deliverables, routines, algorithms, applications, programs, operating environments, databases, interfaces or patches), technology, improvements, materials, works of authorship, documentation, programming aids or trade secrets



developed, created, designed, invented, authored, or conceived by Supplier or any of Supplier's personnel or contractors in respect of any Services or any testing, repairs, fixes, replacements, improvements, enhancements or updates to the Services, shall be that of Supplier's; provided, however, that Client is hereby granted a non-exclusive, non-transferable license to use the Services solely for its internal business purposes, subject to the restrictions set out in this Agreement. Notwithstanding anything to the contrary herein, it is understood and agreed by the Parties that any of the aforementioned intellectual property rights that may be developed, created, designed, invented, authored, or conceived by Client and used by Supplier in the construction of, or incorporated into, any Services shall be the property of Client, and Supplier shall not have any right to any such intellectual property rights and Supplier understands and agrees that it shall not utilize any such ideas, concepts, methods, know-how, or techniques developed, created, designed, invented, authored, or conceived by the Client when providing services to any other Supplier customers. The foregoing restriction, however, shall not restrict Supplier from providing services to or developing solutions for another Supplier customer with the same or similar functionality as the solutions that are provided to Client as part of the Services provided to Client, so long as the preceding restriction is not violated. For the avoidance of doubt, it is understood and agreed that Client is not obligated to provide Supplier with any code, specifications, or information regarding any solutions created solely by Client or on Client's sole behalf, and Supplier agrees not to appropriate any such code, specifications, or information without Client's knowledge and consent.

13 INDEMNIFICATION

13.1 Client shall defend, indemnify and hold harmless Supplier, its affiliates and its respective employees, agents, insurers, officers and directors (collectively "**Supplier Indemnitees**") from and against any and all third party liabilities, claims, actions, damages, fines, suits, fees (including reasonable attorneys' fees) and costs (collectively "**Claims**") arising out of in in connection with a Client's Indemnitee's: (i) negligence, recklessness or willful misconduct, (ii) a breach of this Agreement (including without limitation any warranties herein); (iii) a violation of applicable law, rule, regulation or ordinance in connections with this Services hereunder; and (iv) infringement of any patent, copyright, trade secrets or other intellectual property rights by the Services.

13.2 Supplier shall defend, indemnify and hold harmless Client its Affiliates and their respective employees, agents, insurers, officers and directors, (collectively "**Client Indemnitees**") from and against any and all third party liabilities, claims, actions, damages, fines, suits, fees (including reasonable attorneys' fees) and costs (collectively, "**Claims**") arising out of or in connection with a Supplier Indemnitee's: (i) gross negligence, recklessness or willful misconduct, (ii) a breach of this Agreement (including without



limitation any warranties herein), and (iii) a violation of applicable law, rule, regulation or ordinance in performance of Services hereunder. Supplier shall not be obligated to defend, indemnify, or hold harmless Client Indemnitees from Claims to the extent the same arise as a result of or relating to or arising from a Client Indemnitees' negligence, recklessness, willful misconduct, or any and all actions in breach of this Agreement.

14 MISCELLANEOUS

14.1 Conflict. In the event of a conflict between the provisions of this Agreement and an Order, the terms of the Order shall Control. Capitalized terms used in an Order shall have the same meaning as set forth herein.

14.2 Dispute Resolution.

14.2.1 Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures, in Cook County, Illinois before resorting to arbitration, litigation, or some other dispute resolution procedure.

14.2.2 Arbitration. In the event that mediation is not successful, then, the controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules including the Optional Rules for Emergency Measures of Protection, in Cook County, Illinois, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

14.3 Governing Law and Jurisdiction. This Agreement shall be governed by and construed and enforced according to the internal laws of the State of Illinois, without reference to principles of conflicts of laws. Any legal action, suit or proceeding arising out of or relating to this Agreement, may only be instituted in a State or Federal Courts in the State of Illinois, Cook County, and each Party agrees not to assert, by way of motion, as a defense, or otherwise, in any such action, suit or proceeding, any claim that it is not subject personally to the jurisdiction or such Court, that the action, suit or proceeding is brought in an inconvenient forum, that the venue of the action, suit or proceeding is improper, or that this Agreement or the subject matter hereof may not be enforced in or by such Court. Each Party further irrevocably submits to the jurisdiction of any such Court in any such action, suit or proceeding.



14.4 Severability. The provisions this Agreement are intended to be interpreted in a manner which makes them valid, legal, and enforceable. In the event any provision of this Agreement is found to be partially or wholly invalid, illegal or unenforceable, such provision shall be modified or restricted to the extent and in the manner necessary to render it valid, legal, and enforceable. If such provision cannot under any circumstances be so modified or restricted, it shall be excised from this Agreement without affecting the validity, legality or enforceability of any of the remaining provisions.

14.5 Entire Agreement. No agreements or representations, oral or otherwise, express or implied, have been made by either Party, with respect to the subject matter of this Agreement. This Agreement supersedes and cancels any prior agreement entered into between the Parties with respect to the subject matter of this Agreement. No amendment or modification of this Agreement shall be valid or binding unless made in writing and signed by both Parties.

14.6 Waivers. No waiver of any default or breach of this Agreement shall be deemed a continuing waiver or a waiver of any other breach or default.

14.7 Force Majeure. Failure of performance of any obligation under this Agreement by either Party, if occasioned by Act of God, strike, lockout or other employee action, public enemy, fire, explosion, perils of the sea, frost, flood, drought or other weather condition, war, riot, sabotage, accident, embargo or circumstance of like or different character beyond the control of the failing Party ("**Force Majeure**") shall not subject either party to any liability to the other Party. Notwithstanding the foregoing, Force Majeure shall be of no excuse to the Client's failure to comply with its monetary obligations hereunder and under any applicable Order. If any third-party subcontractor providing service or hardware with respect to this Agreement ceases to provide such services or hardware in connection with a Force Majeure, and Supplier cannot find a suitable replacement vendor, then Supplier shall have the right to terminate this Agreement by providing thirty (30) days prior written notice to Client.

14.8 Independent Contractors. Supplier will manage its personnel and be free to exercise independent judgment as to the manner and method of performance of the Services. Supplier and Client hereby expressly agree that they are independent contractors and nothing in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency relationship, or franchise between the Client and Supplier.

14.9 Grammar, Captions and Exhibits. Grammatical variations of any terms defined herein have similar meanings; words importing the singular shall include the plural and vice versa; words importing the masculine gender shall include the feminine



and neuter genders. The division of this Agreement into separate Articles, Sections, subsections, paragraphs and subparagraphs and the insertion of headings and marginal notes and references are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

14.10 Assignment. Supplier may assign its rights and obligations under this Agreement without the prior consent of the Client. Client shall not assign Client's rights and obligations under this Agreement without the prior consent of the Supplier.

14.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. This Agreement may be executed by facsimile or other electronic (PDF) signature with the same force and effect as an original.

[Signature page shall follow]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SUPPLIER

CLIENT

Industries eXcellence

By _____

Name:

Title:

By _____

Name:

Title: